

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
IN CLERKS OFFICE

RECEIPT # 56286
AMOUNT \$ 150
SUMMONS ISSUED 7-2
LOCAL RULE 4.1 _____
WAIVER FORM _____
MCF ISSUED _____
C.A. NO. _____
BY DPTY. CLK. P
DATE 6-2-07

*****2004 JUN -2 P 1:04*****

PATRICK L. MCGUINNESS,

Plaintiff
U.S. DISTRICT COURT
DISTRICT OF MASS.

v.

COMPLAINT

TXU ENERGY SOLUTIONS LP and
SCOTT HARRISON,

Defendants

04:11170 JLT

INTRODUCTORY STATEMENT

MAGISTRATE JUDGE Dein

1. Plaintiff, a former employee of the defendant employer, brings this complaint under federal and state law, against such employer and its agent, to seek redress because the employer discharged the plaintiff in retaliation for his protests concerning the defendants' racially discriminatory treatment of plaintiff's manager, one Henry Clay Cox, an African-American. Plaintiff seeks an award of damages, including punitive damages, and reasonable attorney's fees.

JURISDICTION AND VENUE

2. Jurisdiction of this court is involved pursuant to 42 U.S.C. § 2000e-5(3) and 28 U.S.C. § 1332.

3. Venue in this district is invoked pursuant to 42 U.S.C. § 2000e-5(3) as plaintiff, a resident of Massachusetts, was employed in this district, working out of his residence.

PARTIES

4. Plaintiff is a citizen of the United States and is currently a resident of Yarmouthport, Massachusetts. He is Caucasian.

5. Defendant, TXU Energy Solutions, L.P. (TXU), is a for profit corporation with a place of business in Dallas, Texas. Defendant, Scott Harrison, was at all times material hereto TXU's Director of Operations. He is also believed to be a resident of Texas.

6. The defendant employer, at all times material hereto has been an employer within the meaning of G.L. c. 151B and 42 U.S.C. 2000e.

ALLEGATIONS GIVING RISE TO PLAINTIFF'S CLAIMS FOR RELIEF

7. Plaintiff was employed by the defendant employer for over 4 years until August, 2003. His most recent position was as a project manager.

8. At all times material hereto plaintiff performed his duties with his employer in an exemplary, competent and more than adequate manner.

9. On or about July 24, 2003, plaintiff wrote a letter to TXU, complaining that plaintiff's manager, Henry Clay Cox, Jr., an African-American, was the victim of racially discriminatory treatment by his (Cox's) superiors at TXU.

10. On or about August 1, 2003 the defendant employer discharged the plaintiff from its employ.

11. Such discharge was in retaliation for plaintiff's complaint, the previous week, of the discriminatory treatment received by Cox.

12. Defendant Harrison made the decision to discharge plaintiff and/or significantly participated in the decision.

13. Such retaliatory discharge was in violation of 42 U.S.C. 2000e-3, and G.L. c. 151B § 4, paragraph 4.

14. Defendant Harrison aided and abetted the unlawful actions of TXU, in violation of M.G.L. c. 151B, § 4, Paragraph 5.

15. On or about November 17, 2003 plaintiff filed a complaint with the EEOC and MCAD which complaint alleged that defendants unlawfully discharged him in retaliation for his complaint of racial discrimination against Cox. This complaint was assigned a docket number of 16CA400387 by the EEOC, and 031303058 by the MCAD.

16. Plaintiff has exhausted all required administrative remedies which remedies are required to be exhausted prior to his bringing or maintaining this action, and received a right to sue letter from the EEOC on or about April 27, 2004.

17. As a direct and proximate result of the defendants' retaliatory employment practices as alleged above, plaintiff has suffered damages in the form of loss of earnings, past and future, as well as mental anguish and suffering.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff prays for the following relief:

A. That he be awarded damages sufficient to compensate him for his loss of earnings, past and future, and for his mental anguish and suffering;

B. That he be awarded punitive damages pursuant to the provisions of 42 U.S.C. § 1981a and G.L. c. 151B Section 9;

C. That he be awarded his costs and disbursements relative to this action, including his reasonable attorney's fees; and

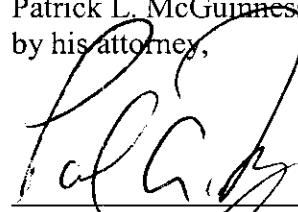
D. That this court award him such other and further relief as it deems to be just and proper.

JURY CLAIM

The plaintiff claims a trial by jury with respect to every issue in this action which may be triable by a jury.

Date: 6-1-04

Patrick L. McGuinness
by his attorney,

A handwritten signature in black ink, appearing to read "Paul A. Manoff", written over a horizontal line.

Paul A. Manoff
47 Winter St., 4th Fl.
Boston, MA 02108
(617) 542-4620
BB0# 318220

mcguinness\complaint

JS 44
(Rev. 3/99)**CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Patrick L. McGuinness

2004 JUN -2 P 1:04

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF; MA
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTSTXU Energy Solutions, LP
and Scott Harrison

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Paul A. Manoff
47 Winter St., #4, Boston, MA 02108
(617) 542-4620 BBO# 318220

ATTORNEYS (IF KNOWN) W. Stephen Cockerham
Huntoon & Williams
1601 Bryan Street, 30th
Dallas, TX 75201

II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | | | |
|-----------------------------------------|----------------------------|----------------------------|---------------------------------------------------------------|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

42 U.S.C., Section 2000e-3, unlawful retaliation against plaintiff, he was dismissed from his employment because he opposed racial discrimination against his supervisor.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
☐ UNDER F.R.C.P. 23

DEMAND \$
 unspecified

CHECK YES only if demanded in complaint:
 JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

6/2/04

Paul A. Manoff

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY). Patrick J. McGuinness v. TXU Energy Solutions LP, et al
2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).
- ___ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT
- X II. 195, 368, 400, 440, 441-444, 540, 550, 625, 710, 720, 730, 740, 790, 791, 820, 830, 840, 850, 890, 892-894, 895, 950.
- ___ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ___ IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ___ V. 150, 152, 153.
3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(E)).
4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT? No
5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? No
- IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY? (SEE 28 USC 2403) _____
6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC 2284? No
7. DO ALL PARTIES IN THIS ACTION RESIDE IN THE CENTRAL SECTION OF THE DISTRICT OF MASSACHUSETTS (WORCESTER COUNTY) - (SEE LOCAL RULE 40.1(C)). YES No OR IN THE WESTERN SECTION (BERKSHIRE, FRANKLIN, HAMPDEN OR HAMPSHIRE COUNTIES)? - (SEE LOCAL RULE 40.1(D)). YES No
8. DO ALL OF THE PARTIES RESIDING IN MASSACHUSETTS RESIDE IN THE CENTRAL AND/OR WESTERN SECTIONS OF THE DISTRICT? YES No (a) IF YES, IN WHICH SECTION DOES THE PLAINTIFF RESIDE? _____
9. IN WHICH SECTION DO THE ONLY PARTIES RESIDING IN MASSACHUSETTS RESIDE? Eastern-Barnstable County
10. IF ANY OF THE PARTIES ARE THE UNITED STATES, COMMONWEALTH OF MASSACHUSETTS, OR ANY GOVERNMENTAL AGENCY OF THE U.S.A. OR THE COMMONWEALTH, DO ALL OTHER PARTIES RESIDE IN THE CENTRAL SECTION _____ OR WESTERN SECTION Not applicable

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Paul A. ManoffADDRESS 47 Winter St., #4, Boston, MA 02108TELEPHONE NO. (617) 542-4620

(Category form - 09/92)